

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CASE NO. 5:21-cv-00488-BO**

PHILIP BULLS, DEAN BRINK, CARMIN
NOWLIN, NICHOLAS PADAQ, and
RAPHAEL RILEY, *on behalf of themselves*
and others similarly situated,

Plaintiffs,

v.

USAA FEDERAL SAVINGS BANK, and
USAA SAVINGS BANK,

Defendants.

**PLAINTIFFS' RESPONSE TO USAA'S
MOTION FOR LEAVE TO FILE A
REPLY IN SUPPORT OF MOTION FOR
RETURN OF INADVERTENTLY
PRODUCED NON-PUBLIC OCC
INFORMATION**

The Court should deny USAA's Motion for Leave to File a Reply in Support of its Motion for Return of Inadvertently Produced Non-Public OCC Information. Replies on discovery motions are permitted only for good cause shown, which USAA has not demonstrated. LCR 1.1 and 7.1(g)(2).

First, USAA bases its request for a reply on the assertion that this Court's order in *Childress v. JP Morgan Chase Bank, N.A. et al.* ("Chase"), No. 5:16-cv-298-BO, DE 313 (E.D.N.C.) was "shielded from public view."¹ DE 55 at 2. This is not true, as that order was never sealed. Furthermore, it is unclear how the timing of USAA reviewing that order has any bearing on its request for a reply. What is more, USAA's proposed reply does not even mention

¹ Plaintiffs referred USAA to this Court's order in *Chase* in their discovery dispute correspondence. DE 49-3 at 8, 9. If there was some unknown reason they could not access this Court's order, they could have asked Plaintiffs to provide it.

the Court's order in *Chase*, much less explain why USAA thinks it is wrong or inapplicable in this very similar case.

Second, USAA's proposed reply is almost entirely generalized arguments about OCC *Touhy* regulations – points it can make it in its response to Plaintiffs' motion to compel, for which Plaintiffs agreed to give USAA (and the OCC) an extra month to respond.²

For the foregoing reasons, USAA should not be permitted a reply on its Motion for Return of Inadvertently Produced Non-Public OCC Information.

This the 17th day of November, 2022.

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² Plaintiffs also note that a reply on Plaintiffs' motion to compel is entirely appropriate, given that the OCC will likely be weighing in, such that new arguments will be raised for which Plaintiffs should have an opportunity to respond.

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Local Rule 83.1 Counsel

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Plaintiffs' Response to USAA's Motion for Leave to File a Reply** has been electronically filed with the Clerk of Courts using the CM/ECF system.

This the 17th day of November 2022.

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